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ACACIA COMMUNICATIONS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VIASAT, INC., a Delaware corporation,  
Plaintiff,

v.

ACACIA COMMUNICATIONS, INC., a  
Delaware corporation, and DOES 1-50,  
inclusive,  
Defendants.

Case No.3:16-cv-00463-BEN-JMA\_

**ANSWER, AFFIRMATIVE  
DEFENSES, AND  
COUNTERCLAIMS**

**Request for Preliminary  
Injunction**

**Demand for Jury Trial**

1 Defendant, Acacia Communications, Inc. (“Acacia”), answers the  
2 complaint of Plaintiff, ViaSat, Inc. (“ViaSat”), as follows:

3 **THE PARTIES**

4 1. Is without knowledge or information sufficient to form a belief as  
5 to the truth of these allegations.

6 2. Admits.

7 3. Is without knowledge or information sufficient to form a belief as  
8 to the truth of these allegations.

9 **JURISDICTION AND VENUE**

10 4. Is without knowledge or information sufficient to form a belief as  
11 to the truth of these allegations.

12 5. Admits that there was a contract between ViaSat and Acacia, and  
13 admits that venue is proper in this Court, but otherwise denies.

14 **FACTUAL ALLEGATIONS**

15 6. Is without knowledge or information sufficient to form a belief as  
16 to the truth of these allegations.

17 7. Admits that there was a contract between ViaSat and Acacia.  
18 Admits that Acacia licensed certain rights under that contract from ViaSat.  
19 Admits that ViaSat owns certain patents, although not all the ones it claims to  
20 own. Otherwise denies.

21 8. Admits that Acacia and ViaSat entered into a contract in November  
22 of 2009 that related to Application Specific Integrated Circuit (“ASIC”)  
23 technology, Digital Signal Processing (“DSP”) core technology, and “Soft  
24 Decision Forward Error Correction Decoder and Encoder (“SDFEC”) core  
25 technology. Otherwise denies.

26 9. Admits that Acacia and ViaSat entered in an agreement in  
27 November 2009 titled “IP CORE DEVELOPMENT AND LICENSE  
28 AGREEMENT NO. TG11102009” (the “Agreement”). Admits that a copy of

1 the Agreement is attached as Exhibit A to the Complaint, but denies that that  
2 copy is the entire Agreement, as that copy is missing the exhibits to the  
3 Agreement. Otherwise denies.

4 10. Admits that the Agreement contains the quoted passage. Otherwise  
5 denies.

6 11. Admits that the Agreement contains the quoted passage. Otherwise  
7 denies.

8 12. Admits that the Agreement contains the quoted passage, without  
9 the added emphasis. Otherwise denies.

10 13. Admits that the Agreement contains the quoted passage. Otherwise  
11 denies.

12 14. Admits that Acacia has paid royalties to ViaSat under the  
13 Agreement. Admits that Acacia is selling a “Metro Coherent CFP Module” (the  
14 “CFP Module”). Admits that Acacia’s website and materials hosted on that  
15 website contain the quoted passages. Otherwise denies.

16 15. Denies.

17 16. Denies.

18 17. Denies.

19 18. Admits that Acacia has not paid ViaSat royalties on the CFP  
20 Module. Otherwise denies.

21 **FIRST CAUSE OF ACTION**

22 **(Breach of Contract)**

23 19. Acacia incorporates its responses to the preceding paragraphs.

24 20. As to royalty obligations, the Agreement speaks for itself.  
25 Otherwise denies.

26 21. Denies.

27 22. Denies.

28 23. Denies.

**SECOND CAUSE OF ACTION**

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

24. Acacia incorporates its responses to the preceding paragraphs.

25. Admits that the Agreement contains an implied covenant of good faith and fair dealing, which is not disclaimable under Delaware law. Otherwise denies.

26. Denies.

27. Denies.

**THIRD CAUSE OF ACTION**

**(Misappropriation of Trade Secrets)**

28. Acacia incorporates its responses to the preceding paragraphs.

29. Denies.

30. Denies.

31. Denies.

32. Denies.

33. Denies.

The remaining paragraphs of the Complaint do not contain allegations that admit of a responsive pleading.

**AFFIRMATIVE DEFENSES**

1. One or more of the causes of action in ViaSat's Complaint fail to state a claim upon which relief can be granted.

2. ViaSat's third cause of action fails to identify its alleged trade secrets with reasonable particularity, as required by California Code of Civil Procedure § 2019.210.

3. ViaSat's claims are barred, in whole or in part, by the doctrines of laches and/or waiver.

4. ViaSat's claims are barred, in whole or in part, by the applicable statutes of limitations.

1           5.     ViaSat failed to mitigate its alleged damages from Acacia's alleged  
2 breach of contract.

3           6.     ViaSat's claims are barred, in whole or in part, by the doctrine of  
4 unclean hands.

5           7.     ViaSat's claims are barred, in whole or in part, by the doctrine of  
6 unjust enrichment.

7           8.     For the reasons discussed in Acacia's counterclaims below and  
8 incorporated here, ViaSat materially breached the Agreement prior to any  
9 alleged material breach by Acacia, thereby excusing any alleged subsequent  
10 material breach by Acacia.

11          9.     For the reasons discussed in Acacia's counterclaims below and  
12 incorporated here, ViaSat misappropriated Acacia's patent rights under the  
13 Agreement.

14          Acacia requests that the Court dismiss the Complaint with prejudice, and  
15 award Acacia its attorneys' fees and costs under 35 U.S.C. § 285, Cal. Civ.  
16 Code § 3426.4, or other law.

### 17                                   **COUNTERCLAIMS**

18          For its Counterclaims against ViaSat, Acacia alleges as follows:

#### 19                                   **THE PARTIES**

20          1.     Acacia is a Delaware corporation having a place of business at  
21 Three Clock Tower Place, Suite 100, Maynard, MA 01754.

22          2.     On information and belief, ViaSat is a Delaware corporation  
23 having a place of business at 6155 El Camino Real, Carlsbad, CA 92009.

#### 24                                   **JURISDICTION AND VENUE**

25          3.     This is an action under the patent laws of the United States, 35  
26 U.S.C. § 1, *et seq.*

27          4.     This Court has subject matter jurisdiction over this action pursuant  
28 to 28 U.S.C. §§ 1331, 1338 and 1454, and supplementary jurisdiction over the

1 related state and common law causes of action under 28 U.S. § 1367.

2 5. Venue is appropriate under 28 U.S.C. § 1391.

3 6. This Court has personal jurisdiction over ViaSat because ViaSat  
4 has a place of business in this district. In addition, ViaSat sued Acacia in the  
5 present lawsuit by bring a state court action located in this district, which Acacia  
6 then removed to federal court on federal question grounds. ViaSat thus  
7 consented to personal jurisdiction of courts located in this district.

### 8 **BACKGROUND**

9 7. Acacia is a leader in network technology. Acacia's mission is to  
10 deliver high-speed coherent optical interconnect products that transform  
11 communications networks, relied upon by cloud infrastructure operators and  
12 content and communication service providers, through improvements in  
13 performance and capacity and a reduction in associated costs.

14 8. In November 2009, Acacia and ViaSat entered into an agreement  
15 titled "IP CORE DEVELOPMENT AND LICENSE AGREEMENT NO.  
16 TG11102009" (the "Agreement"), attached without the Agreement's exhibits as  
17 Exhibit A to the Complaint.

18 9. The Agreement relates to certain hardware and software  
19 technologies used in network communications. Among other things, the  
20 Agreement covers aspects of Application Specific Integrated Circuit ("ASIC")  
21 technology, Digital Signal Processing ("DSP") core technology, and Soft  
22 Decision Forward Error Correction Decoder and Encoder ("SDFEC") core  
23 technology.

24 10. Within its terms and conditions, the Agreement defined the phrase  
25 "Foreground Information" as:

26 all Intellectual Property Rights, design data and information (a)  
27 directly related to the Digital Signal Processing (DSP) Blocks for  
28 use in 100Gb Optical Systems **described in Exhibit C hereof**,...

1 that are first developed or first created by VIASAT or its personnel  
 2 during the course of performing services for ACACIA under this  
 3 Agreement, or (b) that are first developed or first created by  
 4 VIASAT or its personnel in the performance of its services relating  
 5 to Digital Signal Processing under this Agreement, and including  
 6 all changes, additions, revisions, replacements, manuals and  
 7 documentation thereto which VIASAT may provide under this  
 Agreement. For the sake of clarity, and without limiting the  
 foregoing, **the DSP Core and all Deliverables relating thereto  
 shall be deemed Foreground Information.**

8 (Agreement at ¶ 1(j) (all emphasis in the Counterclaims is added, unless  
 9 otherwise noted).)

10 11. Exhibit C is incorporated into and made a part of the Agreement.

11 (Agreement at ¶ 1(p).)

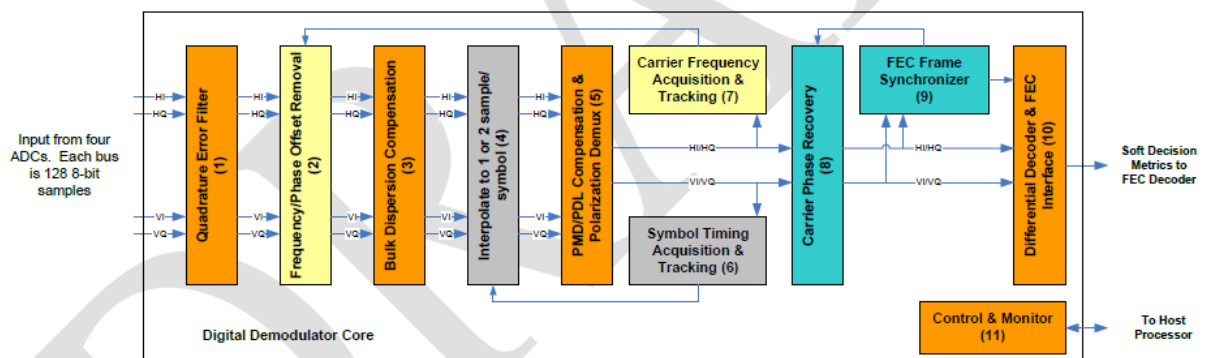
12 12. In Paragraph 3, titled “Foreground Information,” the Agreement  
 13 prohibited ViaSat’s use of any Foreground Information by ViaSat except as  
 14 permitted under the Agreement, and the parties agreed to Acacia’s ownership of  
 15 all intellectual property rights in the Foreground Information:

16 (a) **ACACIA shall own all right, title and interest in and to all**  
 17 **Foreground Information, including all Intellectual Property**  
 18 **Rights therein and thereto. VIASAT will promptly provide**  
 19 **and fully disclose all Foreground Information to ACACIA. All**  
 20 **Foreground Information is works made for hire to the extent**  
 21 **allowed by law and, in addition, VIASAT, at ACACIA’s sole**  
 22 **expense, hereby makes and agrees to make all assignments**  
 23 **necessary to accomplish the foregoing ownership. VIASAT**  
 24 **shall assist ACACIA, at ACACIA’s sole expense, to further**  
 25 **evidence, record and perfect such assignments, and to perfect,**  
 26 **obtain, maintain, enforce, and defend any rights assigned. If**  
 27 **VIASAT is unavailable, unable or unwilling to so assist ACACIA,**  
 28 **VIASAT hereby irrevocably designates and appoints ACACIA,**  
 solely in connection with the exercise of its ownership rights in the  
 Foreground Information, as its agent and attorney in fact to act for  
 and in VIASAT’s behalf to execute and file any document and to  
 do all other lawfully permitted acts to further the foregoing with the  
 same legal force and effect as if executed by VIASAT.

(Agreement at ¶ 3(a).)

13. The parties agreed that the DSP Core was part of the “Foreground Information,” and therefore owned by Acacia, not ViaSat. (Agreement at ¶¶ 1(j), 3(a).)

14. Exhibit C to the Agreement further describes the “Demodulator / DSP... Core.” (Agreement, Ex. C at § 1.1.) Section 3.3. of Exhibit C describes certain functional aspects of the Demodulator/DSP Core, and contained the following block diagram of this core:



**Figure 3: Demodulator Top Level Block Diagram**

(Agreement, Ex. C at § 3.3.)

15. In January and August 2011, inventors employed by ViaSat filed two different provisional patent applications, United States Serial Nos. 61/435,278 (the “‘278 application”) and 61/521,263 (the “‘263 application”) (together, the “ViaSat Provisionals”). Copies of those two applications are attached as Exhibits A and B.

16. The ViaSat Provisionals copy large portions of the DSP Core specification from Exhibit C of the Agreement. For example, Figure 1 in the ‘278 application and Figure 7 in the ‘263 application are almost identical to each other, and both are almost identical copies of Figure 3 from Exhibit C to the Agreement. A comparison of the Figures is below:



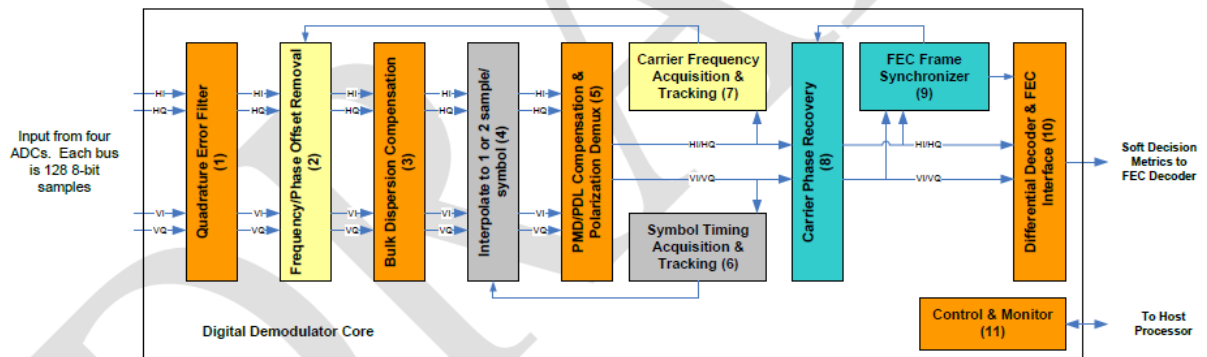


Figure 3: Demodulator Top Level Block Diagram

(Agreement, Ex. C at § 3.3.)

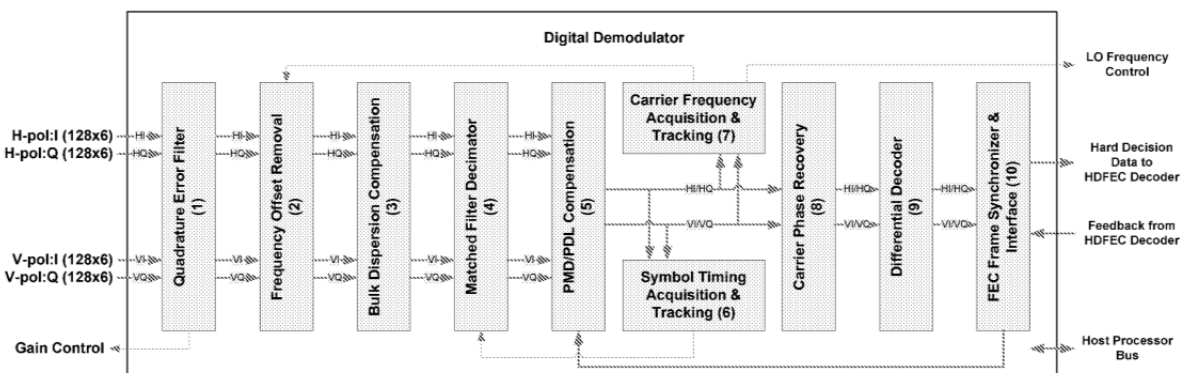


Figure 1: Demodulator Top Level Block Diagram

(‘278 application, Figure 1.)

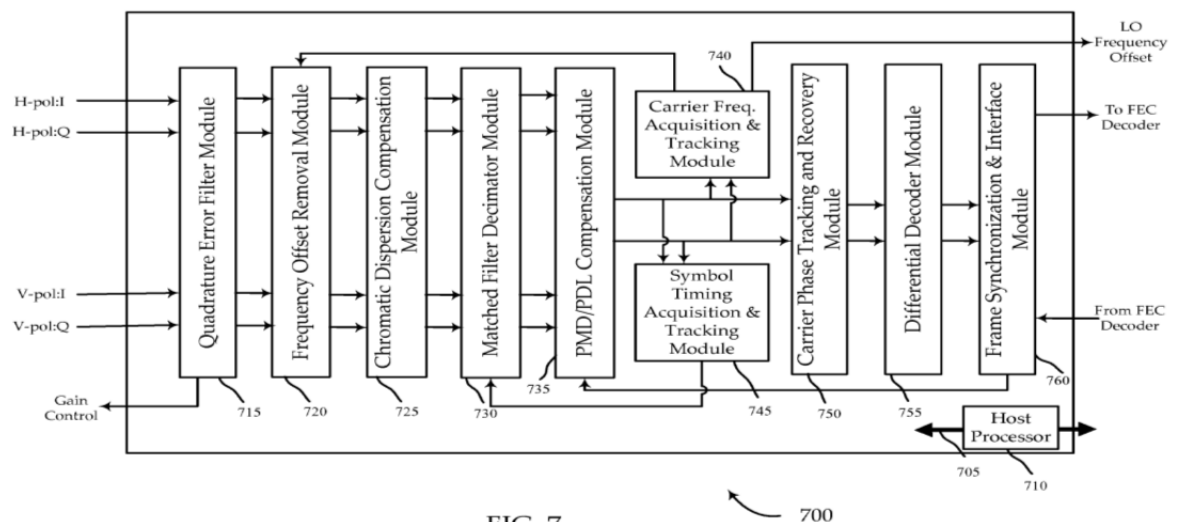


FIG. 7

(‘263 application, Figure 7.)

17. Other figures and text of the ViaSat Provisionals are copied from Exhibit C to the Agreement, often nearly verbatim. For example, compare

1 Exhibit C of the Agreement at § 3.3 (“The demodulator has a control and  
2 monitor interface to the host processor allowing configuration of various  
3 demodulator parameters (filter coefficients, loop gains, etc.) and extraction of  
4 demodulator status.”) with the ‘278 application at 4 (“The Demodulator may  
5 have a control and monitor interface bus connected to a host processor allowing  
6 for configuration of demodulator parameters (filter coefficients, loop gains, etc.)  
7 and extraction of demodulator status.”); compare also Exhibit C of the  
8 Agreement at §§ 3.3.1-3.3.11 with the ‘278 application at 4-14 and the ‘263  
9 application at 9-10 (containing virtually identical subsection headings,  
10 organization, text, and figures).

11 18. ViaSat has filed numerous United States patent applications, Patent  
12 Cooperation Treaty (“PCT”) applications, and foreign patent applications, and  
13 obtained issued patents therefrom, that all claim priority in whole or in part to  
14 the ViaSat Provisionals (all of which together comprise the “ViaSat Patent  
15 Family”). The ViaSat Patent Family includes without limitation the ‘278  
16 application; the ‘263 application; U.S. Patent Nos. 8,559,828, 8,639,126,  
17 8,687,974, 8,682,180, 8,693,897, 8,705,664, 8,705,977, 8,744,279, 8,886,051,  
18 8,891,980, and 9,100,125; U.S. Patent Application Serial No. 14/742,812; PCT  
19 Application Nos. PCT/US12/22231 and PCT/US12/22234; and any other U.S.  
20 or foreign patent applications, U.S. or foreign issued patents, and PCT  
21 applications that claims priority in whole or in part to any of these.

22 19. In addition to the ViaSat Provisionals, all of the other patents and  
23 applications in the ViaSat Patent Family contain the same copied materials from  
24 Exhibit C to the Agreement.

25 20. On information and belief, all legal title in the ViaSat Patent  
26 Family is purported to have been assigned to ViaSat.

27 21. ViaSat had no permission from Acacia to take information  
28 belonging to Acacia under Exhibit C of the Agreement and file patent

1 applications containing that information on ViaSat's behalf.

2 22. ViaSat has not assigned its rights in the ViaSat Patent Family to  
3 Acacia.

4 23. Separately, Acacia submitted its own set of patent applications  
5 relating to the Foreground Information, which Acacia owns under the  
6 Agreement. Specifically, Acacia filed U.S. Provisional Patent Application  
7 Serial Nos. 61/449,812 and 61/449,822, U.S. Non-Provisional Patent  
8 Application Serials Nos. 13/413,873 and 13/413,905, and PCT Application Nos.  
9 PCT/US2012/028014 and PCT/US2012/028038 (together the "Acacia Patents").

10 24. The Acacia Patents list a number of inventors. All but two of the  
11 inventors are or were employed by Acacia, and have assigned their rights in the  
12 Acacia Patents to Acacia.

13 25. The other two listed inventors, Sameep Dave and Fan Mo, are or  
14 were employed by ViaSat.

15 26. Neither Mr. Dave nor Ms. Mo have assigned their rights in the  
16 Acacia Patents to Acacia. Acacia has asked them to assign their rights, and they  
17 both refused to do so.

18 27. ViaSat has an obligation under the Agreement to "assist Acacia" to  
19 "evidence, record and perfect" assignments to Acacia of any and all rights in  
20 Foreground Information, "and to perfect, obtain, maintain, enforce, and defend  
21 any rights assigned." (Agreement at ¶ 3(a).)

22 28. On information and belief, ViaSat has induced Mr. Dave and/or  
23 Ms. Mo to refuse to assign their rights to the Acacia Patents to Acacia.

24 29. ViaSat also has an obligation under the Agreement to "promptly  
25 provide and fully disclose all Foreground Information to ACACIA."  
26 (Agreement at ¶ 3(a).)

27 30. The ViaSat Patent Family, which includes materials from Exhibit C  
28 to the Agreement, are Foreground Information. ViaSat did not provide or fully

1 disclose the ViaSat Patent Family to Acacia.

2 31. ViaSat further had an obligation under the Agreement to maintain  
3 the confidentiality of Acacia's confidential information shared under the  
4 Agreement, and "All Foreground Information shall be deemed ACACIA's  
5 Confidential Information." (Agreement at ¶ 9.)

6 32. The material contained in Exhibit C of the Agreement describing  
7 the DSP Core was Acacia's confidential information.

8 33. Without any authorization from Acacia, ViaSat publicly disclosed  
9 that Acacia confidential information by filing the ViaSat Patent Family.

10 34. On information and belief, ViaSat sells a number of products  
11 and/or services covered by at least one claim of at least one patent in the ViaSat  
12 Patent Family (the "Covered Products").

13 35. On information and belief, the Covered Products include without  
14 limitation every ViaSat product that contains a DSP Core or Demodulator,  
15 including ViaSat's 100G, 200G, 400G, and 1T DSP IP core products. A ViaSat  
16 press release describing some of these products is attached as Exhibit C.

## 17 **COUNT I**

### 18 **(Patent Misappropriation under 35 U.S.C § 1, *et seq.*)**

19 36. Acacia incorporates the allegations of the above paragraphs.

20 37. Acacia owns and has rights to possess Foreground Information  
21 under the Agreement, including all intellectual property rights (such as patent  
22 rights) in that Foreground Information. (Agreement at ¶¶ 1(h), 3(a).)

23 38. The ViaSat Patent Family contains Foreground Information.

24 39. Acacia thereby has an equitable interest in the ViaSat Patent  
25 Family. See Arachnid, Inc. v. Merit Indus., Inc., 939 F.2d 1574, 1580 (Fed. Cir.  
26 1991); Taylor v. Taylor Made Plastics, Inc., 565 F. App'x 888, 889 (Fed. Cir.  
27 2014).

28 40. By filing the ViaSat Patent Family, not promptly providing or fully

1 disclosing the Family to Acacia, and not assigning the ViaSat Patent Family to  
2 Acacia, ViaSat has deprived Acacia of Acacia's equitable interest in the ViaSat  
3 Patent Family.

4 41. ViaSat has wrongfully acquired the ViaSat Patent Family, which is  
5 equitably owned by Acacia.

6 42. On information and belief, ViaSat has made subsequent profitable  
7 use of the ViaSat Patent Family, including by selling the Covered Products.

8 43. Through these actions, ViaSat has misappropriated the ViaSat  
9 Patent Family from Acacia.

10 44. Acacia is entitled to an accounting for ViaSat's patent  
11 misappropriation.

12 45. Acacia is further entitled to a declaration that ViaSat has held the  
13 ViaSat Patent Family in trust for Acacia, and ordering ViaSat to pay Acacia the  
14 benefits of that trust.

15 46. Acacia is also entitled to a rescission of the ownership of the  
16 ViaSat Patent Family, and transfer of that ownership to Acacia.

17 47. Unless ViaSat is preliminarily and permanently enjoined from  
18 continuing to misappropriate the ViaSat Patent Family, Acacia will continue to  
19 be irreparably harmed. Acacia therefore is entitled to a preliminary and  
20 permanent injunction requiring ViaSat to assign all rights in the ViaSat Patent  
21 Family to Acacia. ViaSat also is entitled to a preliminary and permanent  
22 injunction prohibiting ViaSat from making, using, offering to sell, or selling any  
23 Covered Products.

## 24 **COUNT II**

### 25 **(Breach of Contract – Foreground Information)**

26 48. Acacia incorporates the allegations of the above paragraphs.

27 49. ViaSat agreed, as part of the Agreement, that all rights, including  
28 all intellectual property rights, in the Foreground Information belonged to

1 Acacia. ViaSat also agreed to assign all rights in Foreground Information to the  
2 extent necessary to accomplish that ownership.

3 50. Acacia has fully performed its obligations under the Agreement.

4 51. The ViaSat Patent Family contains Foreground Information.

5 52. By filing the ViaSat Patent Family, ViaSat materially breached its  
6 obligation under the Agreement that all Foreground Information, including all  
7 intellectual property rights in that Foreground Information, belong to Acacia.

8 53. By refusing to assign the ViaSat Patent Family, ViaSat materially  
9 breached its obligation under the Agreement to assign all rights in Foreground  
10 Information to the extent necessary to accomplish Acacia's ownership.

11 54. ViaSat's material breaches have proximately caused Acacia to  
12 suffer substantial damages, in an amount to be proven at trial.

13 55. Acacia is also entitled to specifically enforce the agreement, such  
14 that ViaSat is required to assign the ViaSat Patent Family to Acacia.

### 15 **COUNT III**

#### 16 **(Breach of Contract – Failure to Assist** 17 **in Assigning Foreground Information)**

18 56. Acacia incorporates the allegations of the above paragraphs.

19 57. ViaSat agreed, as part of the Agreement, that it would assist Acacia  
20 to evidence, record and perfect assignments to Acacia of Foreground  
21 Information, and to perfect, obtain, maintain, enforce, and defend any rights  
22 assigned.

23 58. Acacia has fully performed its obligations under the Agreement.

24 59. On information and belief, ViaSat has induced ViaSat's current or  
25 former employees Sameep Dave and Fan Mo to refuse to assign their rights to  
26 the Acacia Patents to Acacia, thereby materially breaching its obligations under  
27 the Agreement.

28 60. ViaSat's material breach has proximately caused Acacia to suffer

1 substantial damages, in an amount to be proven at trial.

2 61. Acacia is also entitled to specifically enforce the agreement, such  
3 that ViaSat is required to undertake its best efforts to have Sameep Dave and  
4 Fan Mo assign their rights in the Acacia Patents to Acacia.

5 **COUNT IV**

6 **(Breach of Contract – Failure to Provide**  
7 **and Disclose Foreground Information)**

8 62. Acacia incorporates the allegations of the above paragraphs.

9 63. ViaSat agreed, as part of the Agreement, that it would promptly  
10 provide and fully disclose all Foreground Information to ACACIA.

11 64. Acacia has fully performed its obligations under the Agreement.

12 65. The ViaSat Patent Family contains Foreground Information.

13 66. By failing to either provide or disclose the ViaSat Patent Family to  
14 Acacia, ViaSat materially breached its obligations under the Agreement.

15 67. ViaSat's material breach has proximately caused Acacia to suffer  
16 substantial damages, in an amount to be proven at trial.

17 68. Acacia is also entitled to specifically enforce the agreement, such  
18 that ViaSat is required to provide the ViaSat Patent Family to Acacia by  
19 assigning them to Acacia.

20 **COUNT V**

21 **(Breach of Contract – Confidentiality Clause)**

22 69. Acacia incorporates the allegations of the above paragraphs.

23 70. ViaSat agreed, as part of the Agreement, to maintain the  
24 confidentiality of Acacia's confidential information shared under the  
25 Agreement, and all Foreground Information is Acacia's confidential  
26 information.

27 71. Acacia has fully performed its obligations under the Agreement.

28 72. The ViaSat Patent Family contains Foreground Information.



73. By filing and publicly disclosing the ViaSat Patent Family, ViaSat materially breached its obligation under the Agreement to maintain the confidentiality of Acacia's confidential information.

74. ViaSat's material breach has proximately caused Acacia to suffer substantial damages, in an amount to be proven at trial.

## COUNT VI

**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

75. Acacia incorporates the allegations of the above paragraphs.

76. Implied in the Agreement was a covenant of good faith and fair dealing, pursuant to which ViaSat was obliged to refrain from any acts or conduct which would deny Acacia the receipt and enjoyment of its legitimate expectations flowing from the Agreement.

77. ViaSat violated this covenant and materially breached the contract by, among other things, filing the ViaSat Patent Family which contained Foreground Information owned by Acacia, failing to assign the ViaSat Patent Family to Acacia, failing to assist in having Sameep Dave and Fan Mo assign their rights to the Acacia Patents to Acacia, failing to provide and disclose Foreground Information to Acacia, and failing to maintain the confidentiality of Acacia's confidential information.

78. ViaSat's material breach has proximately caused Acacia to suffer substantial damages, in an amount to be proven at trial.

## COUNT VII

## (Misappropriation of Trade Secrets)

79. Acacia incorporates the allegations of the above paragraphs.

80. Through the Agreement, ViaSat was granted limited access to and use of Acacia's trade secrets. ViaSat nonetheless impermissibly used Acacia's trade secrets by filing the ViaSat Patent Family and by incorporating those trade secrets into its products and services covered by the ViaSat Patent Family, thus



1 violating Cal. Civ. Code. § 3426, *et seq.*

2 81. Acacia took reasonable efforts to maintain the secrecy of its trade  
3 secrets, including without limitation the confidentiality provisions of the  
4 Agreement. ViaSat was obligated by the terms of the Agreement to maintain  
5 the secrecy of Acacia's trade secrets and confidential information.

6 82. As a proximate result of ViaSat's unlawful actions, Acacia has  
7 suffered damages in an amount to be proved at trial.

8 83. ViaSat's misappropriation of trade secrets has caused and will  
9 continue to cause irreparable harm to Acacia, and Acacia is therefore entitled to  
10 a preliminary and permanent injunction against ViaSat from continuing to use  
11 those trade secrets, and prohibiting ViaSat from producing or distributing  
12 products or services that incorporate them.

13 84. On information and belief, ViaSat's misappropriation of Acacia's  
14 trade secrets has been willful and malicious, entitling Acacia to an award of its  
15 attorneys' fees and costs under Cal. Civ. Code § 3426.4.

## 16 **COUNT VIII**

### 17 **(Unfair Competition Under Cal. Bus. & Prof. Code § 17200, *et seq.*)**

18 85. Acacia incorporates the allegations of the above paragraphs.

19 86. By the above-described conduct, ViaSat has defrauded Acacia of  
20 Acacia's patent rights, of Acacia's rights under the Agreement, and of Acacia's  
21 trade secrets. ViaSat has also engaged in unfair competition in violation of Cal.  
22 Bus. & Prof. Code § 17200, *et seq.*

23 87. Acacia, and its customers and potential customers, have been  
24 harmed by ViaSat's conduct, and the harm caused by the conduct outweighs any  
25 benefits that the conduct may have.

26 88. Acacia has been damaged by such conduct in an amount to be  
27 determined at trial.

28 89. Unless stopped by an injunction, ViaSat's behavior will continue

1 and will cause Acacia to suffer irreparable harm for which there is no adequate  
2 remedy at law. Therefore, Acacia is entitled to injunctive relief. It is also  
3 entitled to restitution for such conduct.

#### 4 **RELIEF REQUESTED**

5 For the above reasons, Acacia prays that the court declare and enter a  
6 judgment as follows:

7 A. The Court has jurisdiction over the parties and subject matter of  
8 this action;

9 B. ViaSat has committed patent misappropriation, breached the  
10 Agreement, misappropriated Acacia's trade secrets, and committed unfair  
11 competition under Cal. Bus. & Prof. Code § 17200, *et seq.*;

12 C. Preliminarily and permanently enjoining ViaSat by: (a) requiring  
13 ViaSat to assign all rights in the ViaSat Patent Family to Acacia; (b) prohibiting  
14 ViaSat from filing or pursuing any further patent applications based on  
15 Foreground Information; (c) prohibiting ViaSat from making, using, offering to  
16 sell, or selling any Covered Products; (d) requiring ViaSat to undertake its best  
17 efforts to have Sameep Dave and Fan Mo assign their rights in the Acacia  
18 Patents to Acacia; and (e) prohibiting ViaSat and any of ViaSat's employees,  
19 agents, and those acting in concert with them from disclosing or using Acacia's  
20 trade secrets;

21 D. Ordering an accounting;

22 E. Declaring that ViaSat has held the ViaSat Patent Family in trust for  
23 Acacia, and ordering ViaSat to pay Acacia the benefits of that trust;

24 F. Awarding Acacia its compensatory damages for ViaSat's breaches  
25 of contract and misappropriation of Acacia's trade secrets, and restitution for  
26 ViaSat's unfair competition;

27 G. Finding that ViaSat's actions have been knowing, willful, and  
28 malicious;

1 H. Awarding Acacia enhanced or punitive damages under 35 U.S.C. §  
2 284, Cal. Civ. Code § 3426.3(b), or other law;

3 I. Awarding Acacia its reasonable costs and attorneys' fees under 35  
4 U.S.C. § 285, Cal. Civ. Code § 3426.4, or other law; and

5 J. Awarding Acacia such other and further relief as this Court deems  
6 just and proper.

7 **JURY DEMAND**

8 Acacia demands a trial by jury for all issues so triable.

9  
10 DATED: February 19, 2016

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

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12  
13 By: s/Victor M. Felix

Victor M. Felix

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19 Attorneys for Defendant

ACACIA COMMUNICATIONS, INC.  
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CERTIFICATE OF SERVICE

I certify that I caused to be served a true copy of the above document on February 19, 2016 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4.

Any other counsel of record will be served by electronic mail, facsimile, and/or overnight delivery.

I declare under penalty of perjury that the foregoing statements are true and correct.

s/Victor M. Felix  
Victor M. Felix